



FH

[Click here to enter text.](#)

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: MKB - 203787

PRELIMINARY RECITALS

Pursuant to a petition filed on November 24, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on December 21, 2021, by telephone.

The issue for determination is whether the agency correctly denied the Petitioner's Katie Beckett application because it found the Petitioner is not disabled per its criteria.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Disability Determination Bureau (DDB)
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County. She is 17 years old and lives with family. Her confirmed diagnoses include persistent depressive disorder, borderline mood disorder, oppositional defiant disorder, and anxiety disorder.
2. In 2010, the Petitioner was evaluated at [REDACTED] when she was 3 years old. At that time, her cognitive functioning was noted to be relative strong with cognitive scores in the high-average range. Her behavior was noted to be within normal limits.
3. On June 20, 2011, August 2, 2011, and August 4, 2011, a Neuropsychological Evaluation of Petitioner was conducted by the Department of Neurology at [REDACTED] [REDACTED] [REDACTED] when the Petitioner was 7 years old. She was referred due to ongoing concerns with emotional and behavioral functioning. The evaluator concluded the Petitioner had mild difficulties with impulsivity during testing, but she put forth effort on tasks and complied with all instructions. The results of testing revealed an intact cognitive profile with high average general intellectual abilities. Sustained attention, memory, visual-motor integration, and social perception were intact. She presented some variability in sustained attention abilities and relative weakness in immediate memory. She was noted to have some cognitive weakness for attention and executive functioning, resulting in impulsivity during conversations and lapses in attention as well as difficulty with making changes quickly and applying emotional coping skills. It was further noted that she feels a need for control and had some anxiety.
4. In April 2014, an evaluation of Petitioner's cognitive functioning, attention, and social emotional functioning was conducted by the [REDACTED]. The evaluator noted that the Petitioner's grades and standardized test scores were strong. She was noted to struggle with paying attention and working independently. She displayed on-task academic behaviors in the classroom and her attention and engagement were somewhat inconsistent. She was also noted to struggle with appropriate adaptive skills, such as social skills and adapting to new situations. Overall, the evaluator concluded the Petitioner's abilities were within the average range despite some emotional behaviors present at home and in school.
5. On September 18, 2014, a Neuropsychological Evaluation of Petitioner was conducted at [REDACTED] when Petitioner was 10 years old. The report of findings indicate that the Petitioner was referred for the evaluation to obtain a better understanding of the Petitioner's cognitive, emotional, and behavioral functioning. It was noted that parental reports suggest no clinically significant symptoms of inattention, impulsivity, or difficulty with mood. Petitioner's self-report was not clinically elevated in any domain. In the assessment environment, the Petitioner demonstrated a normal range of emotions. She exhibited some performance concern but not at a level for a clinical diagnosis. Current behavioral and emotional functioning was within normal limits. It was determined that she did not meet diagnostic criteria for mood, anxiety, or oppositional defiant disorder. She was noted to perform well academically. Concentration and intention were average to high average. Executive functioning was found to be average to superior. Verbal, visual immediate and delayed memory, immediate verbal memory, expressive and receptive language skills were all in the average to superior range. The evaluator concluded Petitioner's cognitive functioning was intact with appropriate and expected cognitive development with mood and behavior within normal limits.
6. On March 12, 2015, an Occupational Therapy Evaluation was conducted of the Petitioner at [REDACTED], when Petitioner was 10 years old. The evaluator concluded the Petitioner had symptoms congruent with vestibular dysfunction and decreased visual perceptual processing. Petitioner was noted to have difficulty regulating emotional fluctuations brought on by her "incoordination" and sensory dysfunction. This was found to impact her self-image and ability to relate appropriately with others. The evaluator noted that the Petitioner's difficulty with efficient

use of vestibular (movement), proprioceptive (muscle and joint information) and tactile information resulted in delayed acquisition of functional age-appropriate potential in motor, academic, and social skills.

7. In April 2018, the Petitioner was evaluated at [REDACTED] when she was 13 years old. Concerns were reported about high home-based oppositionality, poor social relatedness, intense physical indicators of anxiety, poor sleep, interpersonal rigidity, and withdrawal. Based on testing, academic functioning was determined to be appropriate; peer relationships were noted to be tenuous. From April 2018 – December 2018, 16 sessions were completed with numerous phone contacts between scheduled sessions. It was noted that therapeutic rapport was unable to be established with the Petitioner so that, by August, sessions were parent focused. It was also noted that the Petitioner was non-compliant with previously prescribed medications.
8. On December 30, 2020, a Katie Beckett application was submitted on behalf of the Petitioner.
9. In December 2020, a Neuropsychological Evaluation was conducted for the Petitioner by [REDACTED]. A report of findings was issued on February 23, 2021. Petitioner scored in the average range for processing speed. However, the evaluator noted significant discrepancies between the two subtests that were conducted. On one test for psychomotor speed and accuracy, she scored in the high average range. On a test for speed of visual search and processing, she scored in the very low range. The evaluator concluded these scores indicate that Petitioner's ability to visually discriminate and process information quickly and accurately is significantly better when information is presented individually as opposed to when a large amount of information is presented at one time. The evaluator concluded that the Petitioner has sufficient basic attention although she may require additional time to ensure sufficient attention. She demonstrated significant deficits in time estimation abilities. It was also reported that the Petitioner has some difficulty learning and recalling auditory information and significant difficulty processing complex visual information. Based on parent and Petitioner reports, it was noted that she has moderate levels of depression and mild anxiety. It was reported that she struggles with establishing a sense of self. Petitioner was noted to experience worsening levels of depression, loneliness, and isolation. The evaluator concluded that the Petitioner demonstrated variability within her attention, concentration, and executive functioning skills. The evaluator ruled out ADHD. Symptoms and presentation were found to be indicative of a Persistent Depressive Disorder with anxiety and Oppositional Defiant Disorder. Individual and family therapy was recommended.
10. On April 28, 2021, one of Petitioner's teachers submitted a Teacher Questionnaire. The teacher reported that she has not observed any functional limitations concerning the Petitioner in the relevant areas.
11. On May 1, 2021, the Petitioner was admitted to [REDACTED] on a Chapter 51 detention after becoming involved in an argument with her parents which escalated into physical aggression toward her mother. She also made suicidal and homicidal threats. Her initial mental status exam noted that she was oriented to person, place, time and situation; her behavior was cooperative; eye contact was fair; psychomotor activity level was normal; mood was unenthusiastic; affect was flat; thought process was organized; denial of thoughts of suicide or homicide and no hallucinations or delusions; high average intelligence; able to concentrate and stay on task; not able to recall words in delayed memory testing but able to recall recent and remote events; poor insight, minimizing behavior and its severity; poor judgment, highly impulsive. From May 2 -4, 2021, the Petitioner was noted to have no signs of agitation and relaxed body language, demonstrated positive social skills, completed activities of daily living and room cleaning appropriately, was respectful of staff and peers; talked with peers; watched movies and played games; few redirections were needed. Petitioner was discharged on May 5,

2021, with assessed risk level of “low” because she did not endorse any suicidal, homicidal, or self-injurious ideations/intent/plans.

12. In June 2021, Petitioner had an evaluation with [REDACTED]. The therapist noted that the Petitioner spoke to the therapist but would not go in-depth about her behavior or what she felt she needed to work on. The therapist noted that the Petitioner has refused treatment in the past and has been non-compliant with prescribed medications. The therapist further noted that there is no current risk for suicide and a slight risk of violence.
13. On July 29, 2021, a psychologist with the DDB reviewed the Petitioner’s records and concluded the Petitioner has severe impairments but those impairments do not meet, medically equal, or functionally equal the listings in Social Security regulations for a disability. She determined the Petitioner’s functional limitations as follows: no functional limitations in Domains 1, 4, and 6; less than marked functional limitations in Domains 2 and 3; and marked limitations in Domain 5.
14. On July 30, 2021, the DDB determined the Petitioner is not disabled and denied the application.
15. On September 8, 2021, a Reconsideration Request was submitted to the DDB. No changes were reported in the Petitioner’s condition.
16. On November 17, 2021, a different psychologist with the DDB reviewed the Petitioner’s records and concluded the Petitioner has severe impairments but those impairments do not meet, medically equal, or functionally equal the listings in Social Security regulations for a disability. She determined the Petitioner’s functional limitations as follows: no functional limitations in Domains 1, 4 and 6; less than marked limitations in Domains 2 and 3; and marked limitations in Domain 5.

DISCUSSION

The DDB denied the Petitioner’s application for medical assistance through the Katie Beckett waiver. This program seeks to save government funds by allowing disabled children who would otherwise be in an institution to receive medical assistance while living at home with their parents. 42 U.S.C. § 1396a(e)(3)(b)(i); 42 C.F.R. § 435.225(b)(1); Wis. Stat. § 49.46(1)(d)4.

The DDB is required to follow the Social Security Administration disability regulations in determining whether a child is disabled for purposes of the Katie Beckett program. According to those regulations, a child is “disabled” if the child is not engaged in substantial gainful activity and has a medically determinable physical or mental impairment or combination of impairments that results in “marked and severe functional limitations.” 20 CFR 416.906. This means that the impairment(s) must meet or medically equal a listing in the Listing of Impairments or functionally equal the listings (also referred to as “functional equivalence”). 20 CFR 416.924 and 416.926a.

To functionally equal the listings, an impairment(s) must be of listing-level severity; that is, it must result in “marked” limitations in two domains of functioning or an “extreme” limitation in one domain. 20 CFR 416.926a(a). Domains are broad areas of functioning intended to capture all of what a child can or cannot do. The following six domain are evaluated:

- (1) Acquiring and using information,
- (2) Attending and completing tasks,
- (3) Interacting and relating with others,

- (4) Moving about and manipulating objects,
- (5) Caring for yourself, and
- (6) Health and physical well-being.

20 CFR 416.926a(b)(1).

The evaluation of functional equivalence starts by considering the information in the case record about how the child's functioning is affected during all activities in home, school, and the community. 20 CFR 416.926a(b). After identifying which of a child's activities are limited, there is a determination of which domains are involved in those activities. There is then a determination whether the child's impairment(s) could affect those domains and account for the limitations. 20 CFR 416.926a(c). The severity of the limitations in each affected domain is then evaluated.

An "extreme" limitation "interferes very seriously with the child's ability to independently initiate, sustain, or complete activities." It does not necessarily mean a total lack or loss of ability to function. See 20 C.F.R. § 416.926a(e)(3). A marked limitation "interferes seriously with [the] ability to independently initiate, sustain, or complete activities." 20 C.F.R. § 416.926a(e)(2).

Depressive Disorder

The listing for depressive disorders for children requires the following:

112.04 Depressive, bipolar and related disorders (see 112.00B3), for children age 3 to attainment of age 18, satisfied by A and B, or A and C:

- A. Medical documentation of the requirements of paragraph 1, 2, or 3:
 - 1. Depressive disorder, characterized by five or more of the following:
 - a. Depressed or irritable mood;
 - b. Diminished interest in almost all activities;
 - c. Appetite disturbance with change in weight (or a failure to achieve an expected weight gain);
 - d. Sleep disturbance;
 - e. Observable psychomotor agitation or retardation;
 - f. Decreased energy;
 - g. Feelings of guilt or worthlessness;
 - h. Difficulty concentrating or thinking; or
 - i. Thoughts of death or suicide.
 - 2. . . .
 - 3. Disruptive mood dysregulation disorder, beginning prior to age 10, and all of the following:
 - a. Persistent, significant irritability or anger;
 - b. Frequent, developmentally inconsistent temper outbursts; and
 - c. Frequent aggressive or destructive behavior.

AND

- B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 112.00F):
 - 1. Understand, remember, or apply information (see 112.00E1).
 - 2. Interact with others (see 112.00E2).
 - 3. Concentrate, persist, or maintain pace (see 112.00E3).
 - 4. Adapt or manage oneself (see 112.00E4).

OR

- C. Your mental disorder in this listing category is “serious and persistent,” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
 - 1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 112.00G2b); and
 - 2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 112.00G2c).

Anxiety Disorder

The listing for anxiety disorder for children requires the following:

112.06 Anxiety and obsessive-compulsive disorders (see 112.00B5), for children age 3 to attainment of age 18, satisfied by A and B, or A and C:

- A. Medical documentation of the requirements of paragraph 1, 2, 3, or 4:
 - 1. Anxiety disorder, characterized by one or more of the following:
 - a. Restlessness;
 - b. Easily fatigued;
 - c. Difficulty concentrating;
 - d. Irritability;
 - e. Muscle tension; or
 - f. Sleep disturbance.
 - ...

AND

- B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 112.00F):
 - 1. Understand, remember, or apply information (see 112.00E1).
 - 2. Interact with others (see 112.00E2).
 - 3. Concentrate, persist, or maintain pace (see 112.00E3).
 - 4. Adapt or manage oneself (see 112.00E4).

OR

C. Your mental disorder in this listing category is “serious and persistent,” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:

1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 112.00G2b); and
2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 112.00G2c).

The Petitioner meets the criteria in Section A for depressive disorder and mood dysregulation disorder and for anxiety disorder. To meet the listing, there must also be evidence of the criteria of Section B or C.

The evidence demonstrates that the Petitioner has limitations in all the criteria under Section B; however, the evidence does not support a finding that her limitations are extreme in one or marked in two of the areas. See Discussion below for Domains #1, 2, 3, and 5.

As to Section C, the evidence reflects that, though ongoing treatment has been recommended for the Petitioner, she has not participated consistently and has not been cooperative when she did participate. Therefore, I cannot conclude that the treatment has been “ongoing” and there is no evidence that the treatment that has been provided has diminished her symptoms. In addition, though there is evidence that she has some struggles adapting to changes, the evidence does not support that she has “minimal capacity” for adapting to changes.

I concur with the DDB that the Petitioner does not meet or medically equal the listings for depression, mood disorder or anxiety.

Functional Equivalence

Because the Petitioner’s impairments do not meet or medically equal a listing, the next step involves determining if the Petitioner’s limitations are functionally equal to a listing. As noted earlier, this involves an evaluation of the Petitioner’s functional limitations in six domains. The Petitioner must demonstrate extreme limitations in at least one domain or marked limitations in at least two domains to functionally equal the listing.

In this case, the DDB reviewers concluded that the Petitioner has no limitations in Domain 1 (Acquiring and Using Information), Domain 4 (Moving About and Manipulating Objects) and Domain 6 (Health and Physical Well-Being). Reviewers also concluded that the Petitioner “less than marked” limitations in Domains 2, 3, and 5. The Petitioner’s mother concurs that the Petitioner has no limitations in Domain #4.

Domain #1: Acquiring and Using Information

20 CFR § 416.926a(g) states as follows:

(g) Acquiring and using information. In this domain, we consider how well you acquire or learn information, and how well you use the information you have learned.

(1) General.

(i) Learning and thinking begin at birth. You learn as you explore the world through sight, sound, taste, touch, and smell. As you play, you acquire concepts and learn that people, things, and

activities have names. This lets you understand symbols, which prepares you to use language for learning. Using the concepts and symbols you have acquired through play and learning experiences, you should be able to learn to read, write, do arithmetic, and understand and use new information.

(ii) Thinking is the application or use of information you have learned. It involves being able to perceive relationships, reason, and make logical choices. People think in different ways. When you think in pictures, you may solve a problem by watching and imitating what another person does. When you think in words, you may solve a problem by using language to talk your way through it. You must also be able to use language to think about the world and to understand others and express yourself, e.g., to follow directions, ask for information, or explain something.

...

(2) Age group descriptors

...

In middle and high school, you should continue to demonstrate what you have learned in academic assignments (e.g., composition, classroom discussion, and laboratory experiments). You should also be able to use what you have learned in daily living situations without assistance (e.g., going to the store, using the library, and using public transportation). You should be able to comprehend and express both simple and complex ideas, using increasingly complex language (vocabulary and grammar) in learning and daily living situations (e.g., to obtain and convey information and ideas). You should also learn to apply these skills in practical ways that will help you enter the workplace after you finish school (e.g., carrying out instructions, preparing a job application, or being interviewed by a potential employer).

(3) Examples of limited functioning in acquiring and using information. The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a “marked” or “extreme” limitation. Whether an example applies in your case may depend on your age and developmental stage; e.g., an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a “marked” or “extreme” limitation in this domain.

- (i) You do not demonstrate understanding of words about space, size, or time; e.g., in/under, big/little, morning/night.
- (ii) You cannot rhyme words or the sounds in words.
- (iii) You have difficulty recalling important things you learned in school yesterday.
- (iv) You have difficulty solving mathematics questions or computing arithmetic answers.
- (v) You talk only in short, simple sentences and have difficulty explaining what you mean.

The case record supports that the Petitioner is at or above her age or grade level academically, demonstrating the ability to acquire and use information. The Petitioner’s mother concurred that she is above average in academic skills; however, she noted that the Petitioner’s ability to process information is

delayed, per the neuropsychological evaluation from February 2021. She noted that the Petitioner's teachers often give her many opportunities to do an assignment correctly, so she ends up with good grades, but it takes her additional time. She also noted that the Petitioner has had jobs in a fast-paced environment, and she cannot keep up when asked to multi-task.

The DDB reviewers concluded the Petitioner has no limitations in this domain because her intellectual abilities and grades indicate she can acquire and use information in an age-appropriate manner. The Petitioner's teacher indicated in a questionnaire that she has not observed any limitations in this domain.

I conclude that the evidence demonstrates that the Petitioner has some functional limitations because of her delays in processing information. However, there is insufficient evidence to demonstrate that her limitations are marked or extreme. Her academic skills indicate that she can function well at school despite the limitations. Therefore, I conclude she has less than marked limitation in this domain.

Domain #2: Attending and Completing Tasks

20 CFR § 416.926a(h) states as follows about this domain:

(h) Attending and completing tasks. In this domain, we consider how well you can focus and maintain your attention, and how well you begin, carry through, and finish your activities, including the pace at which you perform activities and the ease with which you change them.

(1) General.

(i) Attention involves regulating your levels of alertness and initiating and maintaining concentration. It involves the ability to filter out distractions and to remain focused on an activity or task at a consistent level of performance. This means focusing long enough to initiate and complete an activity or task and changing focus once it is completed. It also means that if you lose or change your focus in the middle of a task, you are able to return to the task without other people having to remind you frequently to finish it.

(ii) Adequate attention is needed to maintain physical and mental effort and concentration on an activity or task. Adequate attention permits you to think and reflect before starting or deciding to stop an activity. In other words, you are able to look ahead and predict the possible outcomes of your actions before you act. Focusing your attention allows you to attempt tasks at an appropriate pace. It also helps you determine the time needed to finish a task within an appropriate timeframe.

...

(2) Age group descriptors

...

(v) Adolescents (age 12 to attainment of age 18). In your later years of school, you should be able to pay attention to increasingly longer presentations and discussions, maintain your concentration while reading textbooks, and independently plan and complete long-range academic projects. You should also be able to organize your materials and to plan your time in order to complete school tasks and assignments. In anticipation of entering the workplace, you should be able to maintain your attention on a task for extended

periods of time, and not be unduly distracted by your peers or unduly distracting to them in a school or work setting.

(3) Examples of limited functioning in attending and completing tasks. The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a “marked” or “extreme” limitation. Whether an example applies in your case may depend on your age and developmental stage, e.g., an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a “marked” or “extreme” limitation in this domain.

- (i) You are easily startled, distracted, or overreactive to sounds, sights, movements, or touch.
- (ii) You are slow to focus on, or fail to complete activities of interest to you, e.g., games or art projects.
- (iii) You repeatedly become sidetracked from your activities, or you frequently interrupt others.
- (iv) You are easily frustrated and give up on tasks, including ones you are capable of completing.
- (v) You require extra supervision to keep you engaged in an activity.

The DDB reviewers determined the Petitioner has “less than marked” limitations in this domain. It noted that she has some attention and impulsivity issues, but ADHD has been ruled out. It also noted that she can concentrate during most tests and evaluations.

At the hearing, the Petitioner’s mother noted that the Petitioner cannot follow multi-step directions and needs everything to be broken down into parts to complete the task. She cannot focus enough to retain or listen to what is being said. She is easily distracted, and it is difficult to have a conversation with her because she does not pay attention.

I concur with the reviewer that the Petitioner has functional limitations in this area that are “less than marked”. The school records and therapy records indicate that the Petitioner is generally able to focus and stay on task during activities though she has some difficulties as noted by his mother. ADHD was ruled out during the February 2021 neuropsychological evaluation. The Petitioner’s teacher indicated she has not observed any limitations in this domain.

Domain #3: Interacting and relating with others

20 CFR § 416.926a(i) states as follows:

- (i) Interacting and relating with others. In this domain, we consider how well you initiate and sustain emotional connections with others, develop and use the language of your community, cooperate with others, comply with rules, respond to criticism, and respect and take care of the possessions of others.
 - (1) General.
 - (i) Interacting means initiating and responding to exchanges with other people, for practical or social purposes. You interact with others by using facial expressions,

gestures, actions, or words. You may interact with another person only once, as when asking a stranger for directions, or many times, as when describing your day at school to your parents. You may interact with people one-at-a-time, as when you are listening to another student in the hallway at school, or in groups, as when you are playing with others.

(ii) Relating to other people means forming intimate relationships with family members and with friends who are your age and sustaining them over time. You may relate to individuals, such as your siblings, parents or best friend, or to groups, such as other children in childcare, your friends in school, teammates in sports activities, or people in your neighborhood.

(iii) Interacting and relating require you to respond appropriately to a variety of emotional and behavioral cues. You must be able to speak intelligibly and fluently so that others can understand you; participate in verbal turn taking and nonverbal exchanges; consider others' feelings and points of view; follow social rules for interaction and conversation; and respond to others appropriately and meaningfully.

(iv) Your activities at home or school or in your community may involve playing, learning, and working cooperatively with other children, one-at-a-time or in groups; joining voluntarily in activities with the other children in your school or community; and responding to persons in authority (e.g., your parent, teacher, bus driver, coach, or employer).

...

(2) Age group descriptors

(v) Adolescents (age 12 to attainment of age 18). By the time you reach adolescence, you should be able to initiate and develop friendships with children who are your age and to relate appropriately to other children and adults, both individually and in groups. You should begin to be able to solve conflicts between yourself and peers or family members or adults outside your family. You should recognize that there are different social rules for you and your friends and for acquaintances or adults. You should be able to intelligibly express your feelings, ask for assistance in getting your needs met, seek information, describe events, and tell stories, in all kinds of environments (e.g., home, classroom, sports, extra-curricular activities, or part-time job), and with all types of people (e.g., parents, siblings, friends, classmates, teachers, employers, and strangers).

...

(3) Examples of limited functioning in interacting and relating with others. The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a “marked” or “extreme” limitation. Whether an example applies in your case may depend on your age and developmental stage; e.g., an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a “marked” or “extreme” limitation in this domain.

- (i) You do not reach out to be picked up and held by your caregiver.
- (ii) You have no close friends, or your friends are all older or younger than you.
- (iii) You avoid or withdraw from people you know, or you are overly anxious or fearful of meeting new people or trying new experiences.
- (iv) You have difficulty playing games or sports with rules.
- (v) You have difficulty communicating with others; e.g., in using verbal and nonverbal skills to express yourself, carrying on a conversation, or in asking others for assistance.
- (vi) You have difficulty speaking intelligibly or with adequate fluency.

The DDB reviewers concluded the Petitioner has “less than marked” limitations. They noted that her teacher reported she does not have problems interacting with peers or staff at school. The Petitioner self-reports that she participates in school activities and that she has friends. The reviewers further noted that she has issues with irritability with others, especially at home.

The Petitioner’s mother testified that the Petitioner has poor relationships with family members. She is verbally aggressive and insulting. She won’t answer the door if someone visits. She needs to know who is coming over, why they are coming, when they are leaving – even if she knows them. She doesn’t like anyone to see her, look at her or talk about her. She is hypervigilant when she’s around others, even at home. She has dropped out of extra-curricular activities and quit her job. Her circle of friends is very small, and she has only one close friend. She is not interested in conversing or interacting with her parents, so she primarily stays in her room. Therapy has helped her to open up some and engage in some self-reflection.

Based on the evidence, I concur with the DDB that the Petitioner has less than marked limitations in this domain. During her stay at [REDACTED], she was noted to be appropriate with and interact with staff and peers. Teachers have not observed any issues with interactions. There is evidence of issues with family relationships and irritability. Therefore, she has limitations, but they are less than marked based on her ability to interact with others appropriately outside of home.

Domain #5: Caring for Yourself

20 CFR § 416.926a(k) states as follows:

(k) Caring for yourself. In this domain, we consider how well you maintain a healthy emotional and physical state, including how well you get your physical and emotional wants and needs met in appropriate ways; how you cope with stress and changes in your environment; and whether you take care of your own health, possessions, and living area.

(1) General.

(i) Caring for yourself effectively, which includes regulating yourself, depends upon your ability to respond to changes in your emotions and the daily demands of your environment to help yourself and cooperate with others in taking care of your personal needs, health and safety. It is characterized by a sense of independence and competence. The effort to become independent and competent should be observable throughout your childhood.

(ii) Caring for yourself effectively means becoming increasingly independent in making and following your own decisions. This entails relying on your own abilities and skills and displaying consistent judgment about the consequences of caring for yourself. As you mature, using and testing your own judgment helps you develop confidence in your

independence and competence. Caring for yourself includes using your independence and competence to meet your physical needs, such as feeding, dressing, toileting, and bathing, appropriately for your age.

(iii) Caring for yourself effectively requires you to have a basic understanding of your body, including its normal functioning, and of your physical and emotional needs. To meet these needs successfully, you must employ effective coping strategies, appropriate to your age, to identify and regulate your feelings, thoughts, urges, and intentions. Such strategies are based on taking responsibility for getting your needs met in an appropriate and satisfactory manner.

(iv) Caring for yourself means recognizing when you are ill, following recommended treatment, taking medication as prescribed, following safety rules, responding to your circumstances in safe and appropriate ways, making decisions that do not endanger yourself, and knowing when to ask for help from others.

(2) Age group descriptors

...

(v) Adolescents (age 12 to attainment of age 18). You should feel more independent from others and should be increasingly independent in all of your day-to-day activities. You may sometimes experience confusion in the way you feel about yourself. You should begin to notice significant changes in your body's development, and this can result in anxiety or worrying about yourself and your body. Sometimes these worries can make you feel angry or frustrated. You should begin to discover appropriate ways to express your feelings, both good and bad (e.g., keeping a diary to sort out angry feelings or listening to music to calm yourself down). You should begin to think seriously about your future plans, and what you will do when you finish school.

...

(3) Examples of limited functioning in caring for yourself. The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a “marked” or “extreme” limitation. Whether an example applies in your case may depend on your age and developmental stage; e.g., an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a “marked” or “extreme” limitation in this domain.

- (i) You continue to place non-nutritive or inedible objects in your mouth.
- (ii) You often use self-soothing activities showing developmental regression (e.g., thumb-sucking, re-chewing food), or you have restrictive or stereotyped mannerisms (e.g., body rocking, headbanging).
- (iii) You do not dress or bathe yourself appropriately for your age because you have an impairment(s) that affects this domain.
- (iv) You engage in self-injurious behavior (e.g., suicidal thoughts or actions, self-inflicted injury, or refusal to take your medication), or you ignore safety rules.
- (v) You do not spontaneously pursue enjoyable activities or interests.

(vi) You have disturbance in eating or sleeping patterns.

The DDB reviewers concluded the Petitioner has marked limitations in this domain based on her confirmed diagnoses, her difficulties with family relationships and her non-compliance with prescribed medications and treatment. Her denial or lack of ability to recognize issues and how to resolve them or how to cope leads to increased anger and frustration.

The Petitioner's mother agrees with the above and adds that the Petitioner lacks safety awareness. She notes that the Petitioner has poor self-image, a poor diet, and a flat affect. The Petitioner's mother testified that she has frequent suicidal and homicidal ideations.

I concur with the DDB's conclusion that the Petitioner has marked limitations in this domain. Her inability to appropriately address issues leads to additional frustration, anger, and more inappropriate behavior. [REDACTED] noted that the Petitioner's suicidal and homicidal ideations are done to get the attention of the Petitioner's parents. At the time of her discharge, she was not felt to be at risk for self-harm or harm to others. [REDACTED] noted that there was no risk of self-harm and a "slight" risk of violence to others based on her aggression toward family members. Based on this evidence, I conclude that her limitations are marked but not extreme in this domain.

Domain #6 Health and Physical Well Being

20 CFR § 416.926a(l) states as follows:

(l) Health and physical well-being. In this domain, we consider the cumulative physical effects of physical or mental impairments and their associated treatments or therapies on your functioning that we did not consider in paragraph (j) of this section. When your physical impairment(s), your mental impairment(s), or your combination of physical and mental impairments has physical effects that cause "extreme" limitation in your functioning, you will generally have an impairment(s) that "meets" or "medically equals" a listing.

(1) A physical or mental disorder may have physical effects that vary in kind and intensity, and may make it difficult for you to perform your activities independently or effectively. You may experience problems such as generalized weakness, dizziness, shortness of breath, reduced stamina, fatigue, psychomotor retardation, allergic reactions, recurrent infection, poor growth, bladder or bowel incontinence, or local or generalized pain.

(2) In addition, the medications you take (e.g., for asthma or depression) or the treatments you receive (e.g., chemotherapy or multiple surgeries) may have physical effects that also limit your performance of activities.

(3) Your illness may be chronic with stable symptoms, or episodic with periods of worsening and improvement. We will consider how you function during periods of worsening and how often and for how long these periods occur. You may be medically fragile and need intensive medical care to maintain your level of health and physical well-being. In any case, as a result of the illness itself, the medications or treatment you receive, or both, you may experience physical effects that interfere with your functioning in any or all of your activities.

(4) Examples of limitations in health and physical well-being. The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a “marked” or “extreme” limitation. Whether an example applies in your case may depend on your age and developmental stage; e.g., an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a “marked” or “extreme” limitation in this domain.

(i) You have generalized symptoms, such as weakness, dizziness, agitation (e.g., excitability), lethargy (e.g., fatigue or loss of energy or stamina), or psychomotor retardation because of your impairment(s).

(ii) You have somatic complaints related to your impairments (e.g., seizure or convulsive activity, headaches, incontinence, recurrent infections, allergies, changes in weight or eating habits, stomach discomfort, nausea, headaches, or insomnia).

(iii) You have limitations in your physical functioning because of your treatment (e.g., chemotherapy, multiple surgeries, chelation, pulmonary cleansing, or nebulizer treatments).

(iv) You have exacerbations from one impairment or a combination of impairments that interfere with your physical functioning.

(v) You are medically fragile and need intensive medical care to maintain your level of health and physical well-being.

(m) Examples of impairments that functionally equal the listings. The following are some examples of impairments and limitations that functionally equal the listings. Findings of equivalence based on the disabling functional limitations of a child's impairment(s) are not limited to the examples in this paragraph, because these examples do not describe all possible effects of impairments that might be found to functionally equal the listings. As with any disabling impairment, the duration requirement must also be met (see §§ 416.909 and 416.924(a)).

(1) Any condition that is disabling at the time of onset, requiring continuing surgical management within 12 months after onset as a life-saving measure or for salvage or restoration of function, and such major function is not restored or is not expected to be restored within 12 months after onset of this condition.

(2) Effective ambulation possible only with obligatory bilateral upper limb assistance.

(3) Any physical impairment(s) or combination of physical and mental impairments causing complete inability to function independently outside the area of one's home within age-appropriate norms.

(4) Requirement for 24-hour-a-day supervision for medical (including psychological) reasons.

(5) Major congenital organ dysfunction which could be expected to result in death within the first year of life without surgical correction, and the impairment is expected to be disabling (because of residual impairment following surgery, or the recovery time required, or both) until attainment of 1 year of age.

The DDB reviewers found the Petitioner has no limitations in this domain. The Petitioner's mother testified that the Petitioner is tired most of the time and that her overall health is declining. The Petitioner may be experiencing fatigue because of her depressive and mood disorders. However, the evidence does not indicate that she has a "complete inability to function independently" because of fatigue. I agree with the Petitioner's mother that the impact of her disorders likely have some physical effects such as fatigue that impact her ability to function. Therefore, I conclude that she has "less than marked" limitations in this domain.

In summary, I conclude that the evidence demonstrates the Petitioner has less than marked limitations in Domains 1, 2, 3 and 6, no limitations in Domain 4 and marked limitations in Domain 5. Because the Petitioner does not have marked limitations in two domains or extreme limitations in at least one domain, the DDB correctly determined that the Petitioner is not disabled and correctly denied the Katie Beckett application.

CONCLUSIONS OF LAW

The DDB correctly determined the Petitioner is not disabled.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important, or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

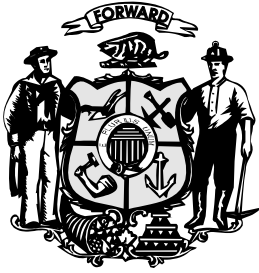
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of January, 2022

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 21, 2022.

Bureau of Long-Term Support
Division of Health Care Access and Accountability